

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 696

Introduced by Senator Wright

February 27, 2009

~~An act relating to emission reduction credits.~~ *An act to add Sections 40440.12 and 40440.13 to the Health and Safety Code, relating to air quality, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 696, as amended, Wright. Air quality: ~~regional districts:~~ *CEQA exemptions:* emission reduction credits.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.

Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national ambient air quality standard is required to establish by regulation, a system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are banked prior to use. *Pursuant to this requirement the*

South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In Natural Resources Defense Council v. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.

~~This bill would state that it is the intent of the Legislature to enact legislation to ensure that there are sufficient credits available for the South Coast Air Quality Management District to issue permits for essential public services and new clean efficient power plants exempt from the requirements of CEQA the adoption and implementation of specified district rules, and the creation or the use of specified credits pursuant to district rules by a thermal powerplant when certain conditions are satisfied. Because a lead agency would be required to determine whether the use of the credits qualifies for an exemption, this bill would impose a state-mandated local program.~~

(2) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to adopt, on a biennial basis, an integrated energy policy report to include an assessment and a forecast of the need for resource additions, efficiency, and conservation that considers all aspects of energy industries and markets.

This bill would require the Energy Commission to perform a needs assessment for a thermal powerplant proposed to be located in the district.

(3) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. (a) The Legislature finds and declares all of the*
2 *following:*

3 *(1) Because of the superior court decision in Natural Resources*
4 *Defense Council v. South Coast Air Quality Management District*
5 *(Super. Ct. Los Angeles County, 2007, No. BS 110792) holding*
6 *the South Coast Air Quality Management District (district) violated*
7 *the requirements of the California Environmental Quality Act*
8 *(CEQA) (Division 13 (commencing with Section 21000) of the*
9 *Public Resources Code) in the promulgation of certain district*
10 *rules, the district is unable to issue over a thousand pending*
11 *permits that rely on the district's internal offset bank to offset*
12 *emissions.*

13 *(2) The superior court decision also required the district to set*
14 *aside several thousand permits that were previously issued in*
15 *reliance on the district's internal offset bank. These permits have*
16 *been subject to analysis performed pursuant to CEQA that the*
17 *lead agency has deemed appropriate.*

18 *(3) If prompt legislative action is not taken to correct this*
19 *situation, projects will be stopped from going forward or frozen*
20 *in place, representing significant losses to the economy, as well*
21 *as numerous well-paying jobs. The impact of approved projects*
22 *not going forward will dramatically impede any economic recovery*
23 *in southern California and contribute to another state deficit as a*
24 *result of lower tax revenues.*

25 *(4) Affected projects include equipment replacement to reduce*
26 *air emissions, plus projects for essential public services such as*
27 *hospitals, schools, landfills, sewage treatment plants, renewable*
28 *energy projects, and small sources, including small businesses*
29 *that are unable to locate or afford credits on the open market.*
30 *With time, many other similar projects will have to be placed on*
31 *hold, or have their application withdrawn.*

32 *(5) The superior court decision also prohibits the district from*
33 *issuing air credits from its Priority Reserve to thermal powerplants*
34 *that are needed to meet the current and future projected electricity*
35 *needs of the region and to prevent blackouts during peak demand*
36 *periods.*

37 *(6) Without corrective legislation, the district cannot improve*
38 *air quality by allowing the existing older and higher emitting and*

1 *less efficient powerplants to be replaced with new cleaner and*
2 *more efficient powerplants. Fifty percent of available total power*
3 *in the region is generated from powerplants that are 40 years or*
4 *older.*

5 *(7) Failure to correct this problem will mean the district cannot*
6 *help meet the mandates set forth in the California Global Warming*
7 *Solutions Act of 2006 (Division 25.5 (commencing with Section*
8 *38500) of the Health and Safety Code) if it cannot issue permits*
9 *to provide necessary peaking power to support increased reliance*
10 *on renewable energy as will be required by state efforts to reduce*
11 *greenhouse gases.*

12 *(b) It is therefore necessary that legislation be enacted to allow*
13 *the district to resume issuing permits and to abrogate the superior*
14 *court decision in Natural Resources Defense Council v. South*
15 *Coast Air Quality Management District (Super. Ct. Los Angeles*
16 *County, 2007, No. BS 110792).*

17 *SEC. 2. Section 40440.12 is added to the Health and Safety*
18 *Code, to read:*

19 *40440.12. The California Environmental Quality Act (Division*
20 *13 (commencing with Section 21000) of the Public Resources*
21 *Code) does not apply to either of the following:*

22 *(a) (1) The adoption or implementation of rules by the south*
23 *coast district establishing offset exemptions, providing Priority*
24 *Reserve credits, or creating or tracking the credits used for offset*
25 *exemptions or Priority Reserve projects, if the discretionary*
26 *projects that use those exemptions or credits are subject to this*
27 *division or are exempt from this division pursuant to a categorical*
28 *or statutory exemption and all of the following are satisfied:*

29 *(A) South coast district rule requires the use of the best available*
30 *control technology, as defined in Section 40405, and air quality*
31 *modeling to ensure the source will not cause a violation, or make*
32 *significantly worse an existing violation, of any ambient air quality*
33 *standards as defined in district rule 1303, unless exempted from*
34 *modeling pursuant to district rule 1304, as amended June 14,*
35 *1996, for each new, relocated, or modified source with an*
36 *emissions increase of one pound per day or greater of any air*
37 *contaminant.*

38 *(B) South coast district rule prohibits the construction of any*
39 *new, relocated, or modified permitted unit if the emissions of any*
40 *toxic air contaminant, as listed by the district board, exceed a*

1 cumulative increase in maximum individual cancer risk at any
2 receptor location of greater than one in one million if the permitted
3 unit is constructed without best available control technology for
4 toxic air contaminants, or greater than 10 in one million if the
5 permitted unit is constructed with best available control technology
6 for toxic air contaminants or exceeds a chronic or acute noncancer
7 health effect hazard index of 1.0.

8 (C) The south coast district accounts for the use of offset credits
9 pursuant to this subdivision as part of the district's state
10 implementation plan submissions and demonstrates that the use
11 of the offset credits will not interfere with attainment or
12 maintenance of ambient air quality standards.

13 (D) South coast district rules 1304, 1309.1, and 1315, as
14 specified in this subdivision, have been submitted to the United
15 States Environmental Protection Agency, and have not been
16 disapproved by that agency.

17 (2) The exemption provided in this subdivision applies to offset
18 exemptions pursuant to south coast district rule 1304, as amended
19 June 14, 1996, Priority Reserve credits pursuant to south coast
20 district rule 1309.1, as amended May 3, 2002, and the adoption
21 and implementation of south coast district rule 1315, as adopted
22 September 6, 2006, and readopted August 3, 2007.

23 (3) Upon the satisfaction of conditions specified in subdivision
24 (1), the exemption provided in this paragraph applies to all action
25 taken pursuant to the south coast district rules specified in
26 paragraph (2) on and after September 6, 2006.

27 (b) The adoption of south coast district rule 1309.1 and the
28 creation or use of Priority Reserve credits pursuant to south coast
29 district rule 1309.1, as amended August 3, 2007, by a thermal
30 powerplant that is subject to this division or to Chapter 6
31 (commencing with Section 25500) of Division 15 of the Public
32 Resources Code if all of the following requirements are satisfied:

33 (1) South coast district rules include the requirements and
34 prohibitions specified in subparagraphs (A) and (B) of paragraph
35 (1) of subdivision (a).

36 (2) The thermal powerplant emissions comply with the
37 requirements for best available control technology, air quality
38 modeling impacts, toxic impacts, and emissions levels as specified
39 in south coast district rule 1309.1, as amended August 3, 2007.

1 (3) *The thermal powerplant has entered into long-term contracts*
2 *with Southern California Edison Company, San Diego Gas and*
3 *Electric Company, or the State of California to provide electricity*
4 *in southern California, or is a powerplant owned by a local*
5 *publicly owned utility that is designed and constructed not to*
6 *exceed that utility's native demand load projections, or the use of*
7 *the credit is otherwise allowed by the south coast district board*
8 *pursuant to south coast district rule 1309.1.*

9 (4) *The south coast district accounts for the thermal*
10 *powerplants' use of Priority Reserve credits pursuant to this*
11 *subdivision as part of its state implementation plan submissions*
12 *and demonstrates that the use will not interfere with attainment*
13 *or maintenance of ambient air quality standards.*

14 (5) *South coast district rule 1309.1, as amended August 3, 2007,*
15 *and south coast district rule 1315, as adopted September 6, 2006,*
16 *and readopted August 3, 2007, have been submitted to the United*
17 *States Environmental Protection Agency and have not been*
18 *disapproved by that agency.*

19 (6) *The State Energy Resources Conservation and Development*
20 *Commission has conducted a needs assessment that has determined*
21 *that the thermal powerplant is necessary to meet future energy*
22 *needs in southern California or the south coast district, and has*
23 *determined it is necessary for the thermal powerplant to be located*
24 *in the south coast district.*

25 (7) (A) *The thermal powerplant pays a mitigation fee for the*
26 *Priority Reserve offset credits obtained that shall be at a minimum*
27 *the amount set forth in south coast district rule 1309.1, as amended*
28 *August 3, 2007.*

29 (B) *The south coast district board may by amendment to that*
30 *rule, after a public hearing, increase the fees without affecting the*
31 *applicability of this paragraph.*

32 (C) *The south coast district shall, to the extent technically and*
33 *economically feasible, use the mitigation fees to mitigate emissions*
34 *of the relevant pollutants or its precursors in the area impacted*
35 *by emissions from the thermal powerplant, with a minimum of*
36 *one-third to be used for installation of renewable or alternative*
37 *sources of energy. Up to 10 percent may be used by the district*
38 *for administration of the mitigation program.*

39 SEC. 3. *Section 40440.13 is added to the Health and Safety*
40 *Code, to read:*

1 40440.13. (a) *The State Energy Resources Conservation and*
2 *Development Commission shall perform a needs assessment*
3 *considering the issue specified in paragraph (6) of subdivision (b)*
4 *of Section 40440.12 for a thermal powerplant proposed to be*
5 *located in the south coast district, whether or not the thermal*
6 *powerplant is subject to Chapter 6 (commencing with Section*
7 *25500) of Division 15 of the Public Resources Code.*

8 (b) (1) *For the purposes of this section, “thermal powerplant”*
9 *means any stationary or floating electrical generating facility*
10 *using any source of thermal energy and any facilities appurtenant*
11 *to the facility. Exploratory, development, and production wells,*
12 *resource transmission lines, and other related facilities used in*
13 *connection with a geothermal exploratory project or a geothermal*
14 *field development project are not appurtenant facilities for the*
15 *purposes of this section.*

16 (2) *“Thermal powerplant” does not include any exclusively*
17 *wind, hydroelectric, or solar photovoltaic electrical generating*
18 *facility.*

19 SEC. 4. *The Legislature finds and declares that a special law*
20 *is necessary and that a general law cannot be made applicable*
21 *within the meaning of Section 16 of Article IV of the California*
22 *Constitution because of unique circumstances concerning the South*
23 *Coast Air Quality Management District.*

24 SEC. 5. *No reimbursement is required by this act pursuant to*
25 *Section 6 of Article XIII B of the California Constitution because*
26 *a local agency or school district has the authority to levy service*
27 *charges, fees, or assessments sufficient to pay for the program or*
28 *level of service mandated by this act, within the meaning of Section*
29 *17556 of the Government Code.*

30 SEC. 6. *This act is an urgency statute necessary for the*
31 *immediate preservation of the public peace, health, or safety within*
32 *the meaning of Article IV of the Constitution and shall go into*
33 *immediate effect. The facts constituting the necessity are:*

34 *Due to the court decision in Natural Resources Defense Council*
35 *v. South Coast Air Quality Management District (Super. Ct. Los*
36 *Angeles County, 2007, No. BS 110792), the South Coast Air Quality*
37 *Management District is unable to issue over a thousand pending*
38 *permits that are either exempt from offset requirements or qualified*
39 *to use offset credits from the district’s Priority Reserve and is*
40 *required to set aside thousands of permits already issued; therefore*

1 *it is necessary for this measure to take effect immediately to allow*
2 *the district to issue permits in an expeditious manner and to*
3 *validate previously issued permits called into question by the*
4 *superior court's decision.*

5 ~~SECTION 1. The legislature finds and declares all of the~~
6 ~~following:~~

7 ~~(a) Under existing law, new or modified sources of air pollutants~~
8 ~~within a federally designated nonattainment area that result in~~
9 ~~emission increases over specified thresholds are required to provide~~
10 ~~emission reduction credits from other sources so that, in aggregate,~~
11 ~~there is no net increase in emissions.~~

12 ~~(b) The air basins regulated by the South Coast Air Quality~~
13 ~~Management District are designated nonattainment areas for~~
14 ~~PM2.5, PM10, and ozone, the majority of which is due to mobile~~
15 ~~sources.~~

16 ~~(c) Due to strict emission limits on stationary sources and the~~
17 ~~inability to create material amounts of new emission reduction~~
18 ~~credits without shutting down businesses and losing jobs, there is~~
19 ~~a severe shortage of emission reduction credits for sources of~~
20 ~~PM2.5 and PM10 in the air basins regulated by the South Coast~~
21 ~~Air Quality Management District.~~

22 ~~(d) In the South Coast Air Quality Management District, certain~~
23 ~~emission sources, including essential public services, rely on~~
24 ~~emission credits contained in the district's internal accounts. The~~
25 ~~district obtains credits for its internal bank from surplus emission~~
26 ~~reductions not otherwise used for credits. Emission reduction~~
27 ~~credits have to be real, surplus, enforceable, quantifiable, and~~
28 ~~permanent.~~

29 ~~(e) The South Coast Air Quality Management District recently~~
30 ~~amended Rule 1309.1 to make emission credits from its internal~~
31 ~~bank available to new clean, efficient power plants. The South~~
32 ~~Coast Air Quality Management District also enacted a new rule~~
33 ~~governing the accounting and tracking of offsets.~~

34 ~~(f) A recent court decision invalidated the South Coast Air~~
35 ~~Quality Management District rule specifying how the district~~
36 ~~accounts for and calculates the amount of emission reduction~~
37 ~~credits available. As a result of that court decision permits that~~
38 ~~rely on credits from the district internal bank cannot be issued.~~

39 ~~(g) The South Coast Air Quality Management District regulates~~
40 ~~more than 28,000 stationary sources, and administers more than~~

1 80,000 permits. The Legislature needs act to avoid business
2 shutdowns and job losses, and to ensure electric system reliability.
3 SEC. 2. It is the intent of the Legislature to enact legislation
4 to ensure that there are sufficient real, surplus, enforceable,
5 quantifiable, and permanent emission reduction credits available
6 so that essential public services, and new clean efficient power
7 plants needed to maintain system reliability and integrate renewable
8 resources can be permitted by the South Coast Air Quality
9 Management District.

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